

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY
DEPUTY CLERK

Plaintiff,

V.

CITY OF BOERNE, ET AL.

Defendants.

CASE NO. SA-96-CA-0808

OG

**JOINT MOTION TO REOPEN CASE AND TO MODIFY
COMPROMISE SETTLEMENT AGREEMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COME all parties, Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS, STATEWIDE (LULAC) and Defendant CITY OF BOERNE, TEXAS (CITY) and file this Joint Motion to Reopen Case and to Modify Compromise Settlement Agreement.

1. On August 2, 1996, LULAC filed its Complaint against the CITY and the members of the City Council in their official capacities, seeking a declaratory judgment under 28 U.S.C. §§ 2201 and 2201 that the then-existing at-large scheme of electing city council members violated the Plaintiff's civil rights in that the election method unlawfully diluted the voting strength of minority voters. The Complaint alleged causes of action arising from 42 U.S.C. §§ 1971, 1973, 1983 and 1988, and under the Fourteenth and Fifteenth Amendments to the United States Constitution. The Complaint also sought injunctive relief and recovery of costs and attorneys' fees under 42 U.S.C. §§ 1988 and 1973-1(e).

2. The Complaint suggested that either a single member electoral district system or a cumulative voting system would ensure a city council of members whose election would not cancel out, minimize or dilute the voting strength of minority voters.

3. The CITY answered. The parties then engaged in discovery and ultimately discussed settlement.

4. A Compromise Settlement Agreement was signed by counsel for the parties on December 18, 1996 (copy attached as Exhibit A). On December 26, 1996, this Court entered an Order dismissing the case based on the Joint Motion to Dismiss and the executed Compromise Settlement Agreement.

5. Under the terms of the Compromise Settlement Agreement, the CITY agreed to modify the at-large election system for City Council to provide for cumulative voting. The CITY subsequently implemented the cumulative voting system in the May 1997 elections. That system has been in effect for each and every City Council election since that time.

6. The cumulative voting system has failed to produce the results desired by either LULAC or the CITY, in that since May 1997, only one minority group member has stood for election to office on the Boerne City Council. That candidate had electoral success, but was ultimately defeated for reelection.

7. The parties wish to modify the Compromise Settlement Agreement to provide for election of the City Council under a single member electoral district system instead of cumulative voting, in hopes of producing the desired remedy with respect to minority candidate and voter participation and voting strength.

8. A Modified Compromise Settlement Agreement has been approved by the parties (copy attached as Exhibit B).

9. The parties have jointly developed a proposed single member district electoral map that would be used to implement such a voting plan. If the Modified Compromise Settlement Agreement is approved by this Court, then preclearance of such modification would be immediately sought from the United States Department of Justice in time to effectuate such modification in the May 2010 City Council elections.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS, STATEWIDE, and Defendant CITY OF BOERNE, TEXAS respectfully request that the Court reopen this case and approve the Modified Compromise Settlement Agreement.

Respectfully submitted,

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By: 

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COUNSEL FOR DEFENDANT

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By: _____



JOSE GARZA

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COUNSEL FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, STATEWIDE
(LULAC)**

Plaintiff,

v.

CITY OF BOERNE, ET AL.

Defendants.

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CASE NO. SA-96-CA-0808

**ORDER GRANTING JOINT MOTION TO REOPEN CASE AND TO MODIFY
COMPROMISE SETTLEMENT AGREEMENT**

On this day came on to be heard the Joint Motion to Reopen Case and to Modify
Compromise Settlement Agreement.

After considering the motion and all of the pleadings and papers on file in this case, the
Court hereby grants the Motion in all respects.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled
and numbered cause be, and the same is hereby, REOPENED.

IT IS FURTHER ORDERED that the provisions of the Modified Compromise Settlement
Agreement pertaining to the elective process in Boerne, Texas are hereby ORDERED to be
implemented as the order and judgment of the Court in this case.

IT IS FURTHER ORDERED that upon completion of all steps necessary to implement
the single member district electoral process for election of members to the Boerne City Council,
the parties shall promptly present a joint motion to dismiss to the Court.

SIGNED THIS _____ DAY OF _____, 2009.

THE HONORABLE UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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FILED

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Deputy I

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, STATEWIDE
(LULAC)

Plaintiff,

V.

CITY OF BOERNE, PATRICK R.
HEATH, Mayor, R.L. BIEN, DONALD
L. GOURLEY, ANN REISSIG, BEN
STAFFORD and RANDY BEDWELL
all in their official capacities as members
of the City Council for the CITY OF
BOERNE, KENDALL COUNTY, TEXAS

Defendants.

CA NO. SA-96-CA-0808

ORDER

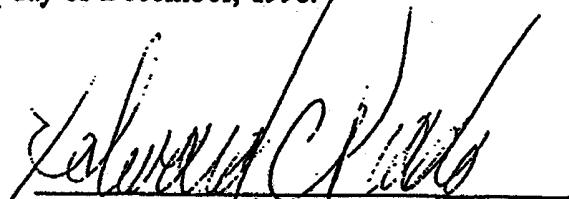
On this day came to be heard the Joint Motion to Dismiss filed by the Plaintiff and Defendants in the above-styled and numbered cause. The Court, having considered the Motion, is of the opinion that same should be grant.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the above-styled and numbered cause be, and the same hereby is, dismissed with prejudiced to the rights of Plaintiff to refile same or any part thereof.

IT IS FURTHER ORDERED that the provisions of the Settlement Agreement pertaining to the elective process in the City of Boerne, Texas are hereby ORDERED to be implemented as the order and judgment of this Court in this case.

IT IS FURTHER ORDERED that all costs be taxed against the party by whom incurred same, and all such costs having been paid, that there is no need for execution to issue.

SIGNED AND ENTERED this 31st day of December, 1996.


EDWARD C. PRADO
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN §
AMERICAN CITIZENS, STATEWIDE §
(LULAC) §
Plaintiff, §

V. §

CA NO. SA-96-CA-0808

CITY OF BOERNE, PATRICK R. §
HEATH, Mayor, R.L. BIEN, DONALD §
L. GOURLEY, ANN REISSIG, BEN §
STAFFORD and RANDY BEDWELL §
all in their official capacities as members §
of the City Council for the CITY OF §
BOERNE, KENDALL COUNTY, TEXAS §
Defendants. §

COMPROMISE SETTLEMENT AGREEMENT

The City of Boerne, Patrick R. Heath, Mayor, R.L. Bien, Donald L. Gourley, Ann Reissig, Ben Stafford, and Randy Bedwell, all in their official capacities as members of the City Council for the City of Boerne, Texas, Defendants herein, and the League of United Latin American Citizens, Statewide (LULAC), Plaintiff herein, by and through their respective counsel of record do enter into a settlement agreement as follows:

1. That Defendants will modify their current at-large election system for the election of Boerne City Council, to provide for cumulative voting as further stated herein and seek preclearance of such modification from the United States Department of Justice in time to effectuate such modification in the May 1997 City elections.

2. That City Council members will be elected at-large without numbered positions or majority vote requirement beginning with the May 1997 election. The current at-large, numbered positions will be phased-out and replaced as follows:

Numbered position to be phased out by year:

1997 Place Number 2
Place Number 4
Mayor

1998 Place Number 1
Place Number 3
Place Number 5

3. That the pattern established above will continue, unless special circumstances require otherwise.

4. That each qualified voter in the City shall be able to cast the relevant number of votes in each election in a cumulative manner. More specifically, if three councilmembers' seats are to be elected then each voter shall have three votes to cast as he/she sees fit, including casting three votes for one candidate, or two votes for one candidate and one vote for a second candidate, or one vote each for three candidates. If two council member seats are up then each voter shall have two votes to cast as he/she sees fit, including casting two votes for one candidate, or one vote each for two candidates.

5. At each election, the names of all properly qualified candidates will be placed on the ballot. The order in which the candidates are listed will be determined by drawing, in accordance with § 52.094 of the Texas Election Code. Beside each name will be placed a number of boxes equal to the number of positions to be filled. An example of such a ballot is attached hereto as Attachment "A".

In years when three councilmembers are to be elected, the ballot instructions will state:

Cast one, two, or three votes by marking an "X" in one, two, or three boxes below. It is permitted to vote up to three times for one candidate, but mark no more than three "X"s in the boxes below.

The instructions will also appear in Spanish, as follows:

Vote uno, dos, o tres votos, marcando una "X" en uno, dos, o tres de los espacios indicados. Se permite votar hasta tres veces por el mismo candidato, pero no marque mas de tres "X"s en los espacios indicados.

In years when two city councilmembers are to be elected, the instructions will be adjusted accordingly, as follows:

Cast one or two votes by marking an "X" in one or two boxes below. It is permitted to vote up to two times for one candidate, but mark no more than two "X"s in the boxes below.

The instructions will also appear in Spanish, as follows:

Vote uno o dos votos marcando una "X" en uno o dos de los espacios indicados. Se permite votar hasta dos veces por el mismo candidato, pero no marque mas de dos "X"s en los espacios indicados.

6. That the current polling places shall continue to be used for early and regular voting. Early voting will be at Boerne City Hall. Regular voting will be at the following location:

Henry Fabra Elementary School
239 Johns Road
Boerne, Texas

7. That all elections shall continue to be in compliance with the relevant provisions of the Election Code and the City Charter, except where those provisions are in conflict with this Agreement and subsequent court order.

8. That Defendants will devise and implement a community education plan in order to inform the voters regarding the modifications to the election system prior to the May 1997 election consisting of the following:

- a. that the City will conduct two public sessions wherein the City will provide bilingual instruction regarding cumulative voting;
- b. that the City will publish an election notice, in both English and Spanish, which describes the cumulative voting procedure in an official city newspaper with local circulation;
- c. that the City will request that an instructive article describing cumulative voting be published, in both English and Spanish, in an official city newspaper with local circulation;
- d. that the City will make available to the public written instructions describing cumulative voting in both English and Spanish at City Hall offices; and
- e. that representatives of the City shall offer to meet with local civic and church groups to discuss cumulative voting with Spanish speaking translators available.

9. It is understood and agreed that this Agreement shall be binding upon and inure to the benefit of the parties, that this Agreement represents a compromise of a doubtful and disputed claim, and that nothing contained herein shall be construed as an admission of liability by or on behalf of Defendants, all such liability being expressly denied.

10. This election change is subject to preclearance with the Department of Justice pursuant to 42 U.S.C. § 1973. Plaintiff agrees to support the City's submission of this election change under Section 5, Voting Rights Act.

11. The issue of attorneys fees has been resolved; the Defendants have agreed to pay the Plaintiff's attorney fees in the amount of \$7,500.00 within thirty (30) days of the execution of this document.

12. The parties agree to jointly request the Court to approve this agreement and to incorporate its terms in an enforceable Court order.


13. Plaintiff and Defendants, by and through their counsel of record, accept the terms set out herein as verified by the signature of their counsel hereon.

IN WITNESS WHEREOF, the parties have executed this agreement on the
18th day of December 1996.

Respectfully submitted,

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By:

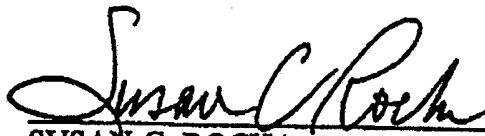


ROLANDO L. RIOS
State Bar No. 16935900

ATTORNEY FOR PLAINTIFF

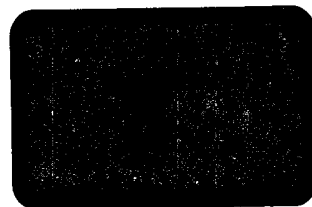
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State Bar No. 05764700
WILLIAM M. McKAMIE
State Bar No. 13686800

ATTORNEYS FOR DEFENDANTS



2011 Mayor (at large)

Place Number 2 (representing District 2)

Place Number 4 (representing District 4)

The Mayor shall continue to be elected at-large by the entire electorate of the city.

A map of the voting districts, approved by the Boerne City Council Ordinance No. 2009-55 on December 2, 2009, is attached as Exhibit B.

4. The pattern established above will continue, unless special circumstances require otherwise. Terms of office for Mayor and Council Members shall be as set forth in the City Charter.

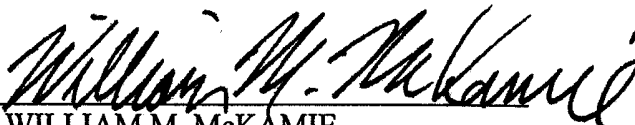
5. Each of the members of the City Council shall be elected by plurality vote of the voters residing within the single member electoral district representing the corresponding place number for each member. A member of the City Council must be a resident of the single member electoral district he or she represents for at least six (6) consecutive months at the time of making application as a candidate for office, and must maintain residence within that district for the term of office. If an elected city council member ceases to reside within the single member electoral district he or she represents, the member shall be deemed to have immediately resigned from such office and it shall be declared vacant.

6. All city elections shall continue to be conducted in compliance with the relevant provisions of the Texas Election Code. All city elections shall continue to be conducted in compliance with the relevant provisions of the City of Boerne City Charter, except where those provisions are in conflict with this agreement and subsequent Court Order approving same.

7. The City of Boerne will devise and implement a community education plan in order to inform the voters regarding the modifications to the election system prior to commencement of balloting for the May 2010 election, to consist of the following:
- a. Conduct two public sessions with bilingual instruction regarding the new voting system;
 - b. Publication of an election notice, in both English and Spanish, which describes the new voting system in an official city newspaper with local circulation;
 - c. Request an instructive article describing the new voting system be published in both English and Spanish in an official city newspaper with local circulation;
 - d. Offer city representatives to meet with local civic and church groups to discuss the new voting system, with Spanish language translators available.
8. After completion of each Decennial Federal Census, the City shall conduct a formal review to determine the need to adjust or change the single member electoral districts to maintain one man – one vote, and to insure compliance with the Voting Rights Act.
9. It is understood and agreed that this Agreement shall be binding upon and inure to the benefit of the parties, that this Agreement represents a compromise of a doubtful and disputed claim, and that nothing contained herein shall be construed as an admission of liability by or on behalf of Defendants, all such liability being expressly denied.
10. This elections change is subject to preclearance with the United States Department of Justice pursuant to 42 U.S.C. §1973. Plaintiff agrees to expressly and actively support the City's submission of this election change under Section 5 of the Voting Rights Act.
11. The parties agree to jointly request the Court to approve this agreement and to incorporate its terms in an enforceable Court order.
12. Plaintiff and Defendant, by and through their counsel of record, accept the terms set out herein as verified by the signatures of counsel hereon.

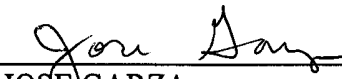
IN WITNESS WHEREOF, the parties have executed this agreement on the _____ day
of December, 2009.

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